

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 DEON L. THOMAS, ) CASE NO. CV 11-4428 AHM (OPx)  
11 )  
12 Plaintiff, ) INITIAL ORDER FOLLOWING FILING OF  
13 v. ) COMPLAINT ASSIGNED TO JUDGE MATZ  
14 BLEIER & COX LLP, et al., )  
15 Defendants. )  
16 )  
17 )  
18 )  
\_\_\_\_\_ )

19 COUNSEL FOR PLAINTIFF SHALL SERVE THIS ORDER ON ALL  
20 DEFENDANTS AND/OR THEIR COUNSEL ALONG WITH THE SUMMONS  
21 AND COMPLAINT, OR IF THAT IS NOT PRACTICABLE AS SOON AS  
22 POSSIBLE THEREAFTER. IF THIS CASE WAS ASSIGNED TO THIS  
23 COURT AFTER BEING REMOVED FROM STATE COURT, THE  
24 DEFENDANT WHO REMOVED THE CASE SHALL SERVE THIS ORDER  
25 ON ALL OTHER PARTIES.

26 This case has been assigned to the calendar of Judge A. Howard Matz.  
27 Judge Matz is intent on assuring that, as called for in Fed.R.Civ. P. 1, this case  
28 will proceed so as “to secure [a] just, speedy and inexpensive determination . . .”

1 The parties are hereby informed of how they are expected to proceed.

2 **A. THE COURT'S ORDERS**

3 Copies of Judge Matz's orders that may have specific application to this  
4 case are available on the Central District of California website. See ¶ J. Those  
5 orders include the following (this is not necessarily a complete list):

- 6 (1) Order Setting Rule 16(b) Scheduling Conference
- 7 (2) Scheduling and Case Management Order
- 8 (3) Order re Protective Orders and Treatment of Confidential  
9 Information
- 10 (4) Orders (separate) re Civil Jury Trials and Court Trials
- 11 (5) Order re Settlement Conference Before This Court

12 **B. SERVICE OF PLEADINGS**

13 Although Fed.R.Civ.P. 4(m) does not require the summons and complaint  
14 to be served for as much as 120 days, the Court expects that they will be served  
15 much sooner than that, and will require plaintiff to show cause before then if it  
16 appears that there is undue delay.

17 **C. ASSIGNMENT TO A MAGISTRATE JUDGE**

18 Under 28 U.S.C. § 636, the parties may consent to have a Magistrate Judge  
19 preside over all proceedings, including trial. The Magistrate Judges who accept  
20 those designations are identified on the Central District's website, which also  
21 contains the consent form. See ¶ K.

22 **D. APPLICATIONS AND STIPULATIONS FOR EXTENSIONS**  
23 **OF TIME**

24 **A. Applications or Stipulations to Extend the Time to File**  
25 **any Required Document or to Continue any Pretrial or**  
26 **Trial Date.**

27 No stipulations extending scheduling requirements or modifying applicable  
28 rules are effective until and unless the Court approves them. Both applications

1 and stipulations must set forth:

- 2 1. the existing due date or hearing date;
- 3 2. specific, concrete reasons supporting good cause for granting the
- 4 extension. In this regard, a statement that an extension “will promote settlement”
- 5 is insufficient. The requesting party or parties must indicate the status of ongoing
- 6 negotiations: have written proposals been exchanged? Is counsel in the process of
- 7 reviewing a draft settlement agreement? Has a mediator been selected?
- 8 3. whether there have been prior requests for extensions, and whether
- 9 these were granted or denied by the Court.

#### 10 **E. TRO’S AND INJUNCTIONS**

11 Parties seeking emergency or provisional relief shall comply with

12 F.R.Civ.P. 65 and Local Rule 65. The Court will not rule on any application for

13 such relief for at least 24 hours after the party subject to the requested order has

14 been served; such party may file opposing or responding papers in the interim.

15 The parties shall lodge a courtesy copy, conformed to reflect that it has been

16 filed, of all papers relating to TROs and injunctions. The courtesy copy shall be

17 placed in the drop box in the entrance way to chambers, to the left of Courtroom

18 14. All such papers shall be filed “loose” - - *i.e.*, not inside envelopes.

#### 19 **F. CASES REMOVED FROM STATE COURT**

20 All documents filed in state court, including documents appended to the

21 complaint, answers and motions, must be refiled in this Court as a supplement to

22 the Notice of Renewal, if not already included. *See* 28 U.S.C. § 1447(a)(b). If

23 the defendant has not yet answered or moved, the answer or responsive pleading

24 filed in this Court must comply with the Federal Rules of Civil Procedure and the

25 Local Rules of the Central District. If before the case was removed a motion was

26 pending in state court, it must be re-noticed in accordance with Local Rule

27 ///

1                   **G. STATUS OF FICTITIOUSLY NAMED DEFENDANTS**

2                   This Court intends to adhere to the following procedures where a matter is  
3 removed to this Court on diversity grounds with fictitiously named defendants  
4 referred to in the complaint. (*See* 28 U.S.C. ¶¶ 1441(a) and 1447.)

5                   1. Plaintiff is normally expected to ascertain the identity of and serve  
6 any fictitiously named defendants within 120 days of the removal of the action to  
7 this Court.

8                   2. If plaintiff believes (by reason of the necessity for discovery or  
9 otherwise) that fictitiously named defendants cannot be fully identified within the  
10 120-day period, an *ex parte* application requesting permission to extend that  
11 period to effectuate service may be filed with this Court. Such application shall  
12 state the reasons therefor, and may be granted upon a showing of good cause.  
13 The *ex parte* application shall be served upon all appearing parties, and shall state  
14 that appearing parties may comment within seven (7) days of the filing of the *ex*  
15 *parte* application.

16                   3. If plaintiff desires to substitute a named defendant for one of the  
17 fictitiously named parties, plaintiff first shall seek to obtain consent from counsel  
18 for the previously-identified defendants (and counsel for the fictitiously named  
19 party, if that party has separate counsel). If consent is withheld or denied,  
20 plaintiff may apply *ex parte* requesting such amendment, with notice to all  
21 appearing parties. Each party shall have seven calendar days to respond. The *ex*  
22 *parte* application and any response should comment not only on the substitution  
23 of the named party for a fictitiously named defendant, but on the question of  
24 whether the matter should thereafter be remanded to the Superior Court if  
25 diversity of citizenship is destroyed by the addition of the new substituted party.  
26 *See* U.S.C. § 1447(c)(d).

27                   ///

28                   ///

1                   **H.     BANKRUPTCY APPEALS**

2                   Counsel shall comply with the ORDER RE PROCEDURE TO BE  
3 FOLLOWED IN APPEAL FROM BANKRUPTCY COURT issued at the time  
4 the appeal is filed in the District Court. The matter is considered submitted upon  
5 the filing of the appellant's reply brief. No oral argument is held unless  
6 otherwise ordered by this Court.

7                   **I.     MOTIONS UNDER FED.R.CIV.P. 12**

8                   Many motions to dismiss or to strike could be avoided if the parties confer  
9 in good faith (as they are required to do under L.R. 7-3), especially for perceived  
10 defects in a complaint, answer or counterclaim which could be corrected by  
11 amendment. *See Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir. 1996) (where a  
12 motion to dismiss is granted, a district court should provide leave to amend  
13 unless it is clear that the complaint could not be saved by *any* amendment).  
14 Moreover, a party has the right to amend his complaint "once as a matter of  
15 course at any time before a responsive pleading is served." Fed.R.Civ.P. 15(a).  
16 A 12(b)(6) motion is not a responsive pleading and therefore plaintiff might have  
17 a right to amend. *See Nolen v. Fitzharris*, 450 F.2d 958, 958-59 (9th Cir. 1971);  
18 *St. Michael's Convalescent Hospital v. California*, 643 F.2d 1369, 1374 (9th Cir.  
19 1981). And even where a party has amended his Complaint once or a responsive  
20 pleading has been served, the Federal Rules provide that leave to amend should  
21 be "freely given when justice so requires." F.R.Civ.P. 15(a). The Ninth Circuit  
22 requires that this policy favoring amendment be applied with "extreme  
23 liberality." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th  
24 Cir. 1990). These principles require that counsel for the plaintiff should  
25 carefully evaluate the defendant's contentions as to the deficiencies in the  
26 complaint and that in many instances the defendant (or moving party) should  
27 agree to any amendment that would cure a curable defect.

28                   ///

1 In the unlikely event that motions under Fed.R.Civ.P. 12 challenging  
2 pleadings are filed after the Rule 16(b) Scheduling Conference, the moving party  
3 shall attach a copy of the challenged pleading to the Memorandum of Points and  
4 Authorities in support of the motion.

5 The foregoing provisions apply as well to motions to dismiss a  
6 counterclaim, answer or affirmative defense, which a plaintiff might contemplate  
7 bringing.

8 **J. COURTESY COPIES AND COMPUTER DISKS**

9 Courtesy copies are required for all e-filed documents and must be  
10 delivered to the drop box in the entrance way to chambers, to the left of  
11 Courtroom 14, located at 312 N. Spring Street, Spring Street level, no later than  
12 noon the following business day. In addition, courtesy copies of manually filed  
13 documents are required when: (1) reply papers are filed late; or (2) emergency  
14 circumstances make them essential -- e.g., for TROs, ex parte applications or  
15 papers filed during trial or within two days of a scheduled hearing, pre-trial  
16 conference or trial. When the Court requires an electronic version of any  
17 document be submitted (e.g., with summary judgment papers or proposed jury  
18 instructions), that Word/WordPerfect formatted document should be emailed to  
19 the court clerk at [stephen\\_montes@cacd.uscourts.gov](mailto:stephen_montes@cacd.uscourts.gov). Counsel should avoid  
20 leaving extra copies of voluminous documents with chambers when they are not  
21 necessary to comply with this paragraph.

22 **K. ELECTRONIC FILING**

23 All documents which are required to be filed in an electronic format  
24 pursuant to General Order No. 08-02 must be filed electronically no later than  
25 midnight on the date due, unless otherwise ordered by the Court. Documents  
26 filed late may be stricken by the Court. The Court will not accept documents  
27 which were filed electronically, but which otherwise fail to comply with filing  
28 requirements.

1           Courtesy Paper Copies. Unless otherwise ordered, courtesy paper copies  
 2 of all electronically filed documents must be delivered to the courtesy box  
 3 outside chambers no later than 12:00 noon the following business day. The  
 4 courtesy paper copies must comply with Local Rule 11-3, i.e., blue backed, font  
 5 size, page numbering, tabbed exhibits, etc., unless otherwise directed. IF A  
 6 DOCUMENT CONTAINS EXHIBITS THAT ARE NOT TABBED, THE  
 7 COURT MAY DECLINE TO READ THE EXHIBITS. The courtesy paper copy  
 8 must be prominently labeled COURTESY COPY on the face page. The courtesy  
 9 paper copy must include the Notice of Electronic Filing, which should be the last  
 10 page of the document. The court's CM/ECF website contains additional  
 11 instructions for delivery of courtesy copies.

12           It would benefit the Court, and thus would be in counsel's interest, for  
 13 counsel seeking any kind of expedited relief, such as by an *Ex Parte* Application  
 14 or an application for a Temporary Restraining Order, to deliver the courtesy  
 15 paper copies to chambers *immediately* after the applicable filed document(s) have  
 16 been filed.

17           **L.    WEBSITE**

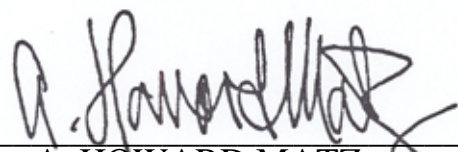
18           Copies of this Order and other orders of this Court are available on the  
 19 Central District of California's website, at "www.cacd.uscourts.gov," under  
 20 "Judge's Requirements."

21           The Court thanks counsel and the parties for their anticipated cooperation.

22           IT IS SO ORDERED.

23  
 24           Dated: August 2, 2011

25  
 26  
 27  
 28



A. HOWARD MATZ  
 United States District Judge